

Appl. No. 09/499,871
Amdt. Dated May 12, 2005
Reply to Office action of January 12, 2005

REMARKS/ARGUMENTS

Claims 1-50 are pending in the present application.

This response is in response to the Office Action mailed January 12, 2005. In the Office Action, the Examiner rejected claims 1, 11, 21, 31, and 41 under 35 U.S.C. § 112; claims 1-50 under 35 U.S.C. § 102(e). Reconsideration in light of the remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 112

1. In the Office Action, the Examiner rejected claims 1, 11, 21, 31, and 41 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Specifically, the Examiner states that it is not clear what exactly is intended by the term "loop-back path"; is data on primary path looped back to the secondary path by the use of the switching element? (Office Action, page 2, paragraph 3). Applicants respectfully direct the Examiner's attention to the Specification, page 6 (lines 18-25). The loop-back path connects the node 140 to node 110. The significance of the loop-back path was shown in the previous response in the definition provided by ATIS, repeated below for ease of reference:

Digital loopback: A mechanism incorporated into a terminal or into equipment in the network whereby a duplex communication path may be connected back upon itself so that the digits sent on the transmit path are returned on the receive path.

Therefore, Applicants respectfully request the rejection under 35 U.S.C. § 112 be withdrawn.

Rejection Under 35 U.S.C. § 102

2. In the Office Action, the Examiner rejected claims 1-50 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,426,941 issued to Vaman et al. ("Vaman"). Applicants respectfully traverse the rejection and contend that the Examiner has not met the burden of establishing a prima facie case of anticipation.

To anticipate a claim, the reference must teach every element of a the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Vergegaal Bros. v. Union Oil Co. of

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California, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

Applicants reiterate the arguments set forth in the previously filed Response to the Office Action.

Vaman discloses a hitless ATM cell transport for reliable multi-service provisioning. On one scenario, when there is impairment in the working path, the services carried by the working path are re-routed onto a protection or secondary path (Vaman, col. 3, lines 27-32). In another scenario, the source node transmits the user service concurrently over both the working and protection or secondary paths. When an impairment in the working path is detected, the destination node switches to the use of the protection path information concurrently relayed to it (Vaman, col. 3, lines 33-43).

Vaman does not disclose, either expressly or inherently, (1) a loop-back path to provide connectivity between the first and second nodes, the first node having a primary connection and a secondary connection, the primary connection carrying the user connections during a normal mode, the secondary connection not using network bandwidth during the normal mode, and (2) a switching element coupled to the loop-back path and the first node to switch the connectivity from the primary connection to the secondary connection when there is a failure condition at the primary connection.

In the Office Action, the Examiner states that Vaman discloses a secondary connection as the protection path (Office Action, page 3, paragraph 5). The Examiner then contends that Vaman teaches that a switching element (service controller) coupled to the loop-back path (the protection path) switches the connectivity from the primary connection to the secondary connection (the protection path) when there is a failure condition at the primary connection (Office Action, page 3, paragraph 5). Applicants respectfully disagree for the following reasons.

Vaman merely discloses a protection path, not a loop-back path and a secondary path. The Examiner equates the loop-back path with the secondary connection. In contrast, the claimed invention uses a loop-back path to connect the first and second nodes and the first node has a primary connection and a secondary connection. It is clear that the loop-back path is different than the secondary connection.

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The Examiner further states that the Vaman reference used herein teaches the loop-back path which provides connectivity between the first and second nodes (Office Action, page 5). However, as argued above, Vaman merely discloses a protection path, not a loop-back path. The Examiner further states that "loop-back" is a terminology commonly used in the protection switching environment, and has a general meaning of 'switching the connection over to a different path' (Office Action, page 5). Applicants respectfully disagrees. The term "loop-back" has the word "back" to indicate a return function. Applicants provided a definition for digital loopback in the previous response, repeated above in the argument against the §112 rejection.

Therefore, Applicants believe that independent claims 1, 11, 21, 31, and 41 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicants respectfully request the rejection under 35 U.S.C. §102(e) be withdrawn.

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Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: May 12, 2005

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